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To: Councilman Michael DeFusco
From: Scott DeRosa, Esq., Assistant Corporation Counsel
Date: July 6, 2018
Re: Political Subdivision Unclassified Service

Please accept this memorandum in response to your request for a legal opinion interpreting N.J.S.A. 11A:3-5 "Political subdivision unclassified service." Based on the information provided to the Law Department, it is my understanding that you are inquiring whether the above referenced statute limits the organization of the Mayor's Office to the two specific positions identified in the statute. For the reasons set forth below, it is my opinion that the answer to your question is, no.

The New Jersey Supreme Court explained the purpose of the Civil Service Act ("Act") as follows: "The purpose of the Act is 'to ensure efficient public service for state, county, and municipal government.' The goal of the Act is to permit employees to be appointed and advanced based on their merit and demonstrated abilities. Civil Service positions are designed to be 'beyond political control, partnership, and personal favoritism.'" In re Johnson, 215 N.J. 366, 375 (2013). The Court went on to state, "[i]n furtherance of its purpose, the Act created the Commission. N.J.S.A. 11A:2-1. Among its various responsibilities, the Commission is charged with the assignment of titles among the career service, the senior executive service, and the unclassified service for positions in State service and political subdivisions. N.J.S.A. 11A:3-1. The Act was "designed to procure efficient public service and to maintain stability and continuity in ordinary public employment." Id. at 377.

Thus, the civil service of a municipality operating under Civil Service is divided into the unclassified service and the career service. See N.J.S.A. 11A:3-1; N.J.A.C. 4A:1-1.3. The career service includes all positions and job titles subject to the tenure provisions of the statutes, and therefore encompasses all persons in the paid service of a municipality operating under Civil Service not included in the unclassified service. See N.J.S.A. 11A:3-5; N.J.A.C. 4A:1-1.3. The unclassified positions are identified by statute, unless otherwise designated according to criteria set by the rules codified in Title 4A of the New Jersey Administrative Code.

In pertinent part, N.J.S.A. 11A:3-5 states, "The political subdivision unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include the following...b. One secretary and one confidential assistant to each mayor."

Id. I find that a plain reading of the above statute simply demonstrates that civil service has authorized one unclassified secretary and one unclassified confidential aide as potential appointments to all mayors.

In the instant matter, the ordinance pertaining to the Mayor's Office is located in Chapter 51. In relevant part it states: "The personnel staff in the Office of the Mayor shall include a Secretary, Clerk-Stenographer and Confidential Aide." Id. at § 51-1B. Therefore, the titles of Secretary and Confidential Aide are unclassified. As such, neither title is protected by the provisions of the Civil Service Act. The statute does not regulate the organization of the Mayor's office, but rather it simply provides for the potential appointment of two unclassified titles in the Mayor's office.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your consideration in this matter.

Very truly yours,

Scott DeRosa, Esq. /s/
Assistant Corporation Counsel